

From: McKenna, Elizabeth
To: ["Morrison, Matthew W."](#)
Subject: UCR
Date: Tuesday, December 08, 2015 5:04:00 PM

Matt, as I said in my voicemails to you, Rick Albright felt it was necessary to respond to Peter Rozee's email. I am forwarding you the correspondence. Please give me a call when you have a chance.

Regards,

Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA, Region 10
1200 Sixth Avenue (ORC-158)
Seattle, WA 98101
(206) 553-0016

From: Albright, Rick
Sent: Tuesday, December 08, 2015 4:36 PM
To: 'Rozee Peter VANM' <Peter.Rozee@teck.com>
Subject: RE: Teck/UCR

Peter, I am responding to the questions raised in your email. In particular, you asked for clarification of my statement that EPA will rely on the liability decision obtained by the Tribes when EPA pursues a CERCLA cleanup of the Site. As you know, prior to the liability decision, Teck was unwilling to enter into a CERCLA settlement agreement. As a result, the RI/FS agreement that EPA and Teck signed was not entered into pursuant to CERCLA. In addition, the agreement does not commit Teck to perform removal or remedial actions. I want to reiterate that EPA is appreciative of Teck's work at the Site, including the recent removal action. If, however, Teck had not agreed to perform the response actions under a CERCLA settlement agreement, the liability decision would have been used to support issuance of a unilateral administrative order. This fact was very important to EPA, as it provided a level of certainty that removal actions would be completed in 2015. We are very pleased that Teck is optimistic that EPA and Teck will be able to reach agreement for any necessary cleanup of the Site. We certainly hope that it will not be necessary to rely on the liability determination obtained by the Tribes to compel Teck to perform future work under a CERCLA agreement. However, a liability determination provides a solid legal foundation for an enforcement action in the unfortunate event that the parties cannot reach agreement.

My letter was not intended to opine on the recoverability of any specific response costs. But, you asked in your email whether information generated by the Tribes related to their expert reports informed the RI/FS and whether such information is included in the administrative record. EPA is required to include in the administrative record documents that were considered or relied upon in selecting a response action. In the UCR matter, the final administrative record has not yet been

compiled because EPA has not yet issued a Record of Decision for the Site. EPA, potentially responsible parties, states, tribes, and the public can produce documents that will be part of the administrative record for the site. The Tribes provided EPA with data related to their expert reports in the litigation and EPA has used information from those reports to inform EPA's decision making in the RI/FS, and is likely to do so again regarding future remedial action decisions at the site.

Regards,
Rick

From: Rozee Peter VANM [<mailto:Peter.Rozee@teck.com>]

Sent: Sunday, December 06, 2015 12:02 PM

To: Albright, Rick <Albright.Rick@epa.gov>

Subject: Teck/UCR

Rick I understand that Matt Morrison of Pillsbury has followed up with your colleagues regarding a further letter to clarify your letter dated December 3, 2015. As you may be aware, the Tribes have entered that letter into evidence to advance their litigation interests, and there is the potential that it creates quite a bit of confusion, particularly in relation to the comments to the effect that the Tribes have collected data that has informed studies under the RI/FS and will be included in the administrative record for EPA's remedy decision. It is not clear to us whether that is a reference to the Tribes' expert studies to support their litigation position, which despite being more than 5 years old are not yet in the administrative record (and likely could not be given that they were not prepared in accordance with an EPA approved quality assurance plan, which is required for consistency with the National Contingency Plan). If the reference in your letter is not to the Tribes' expert reports, but is to data generated in the course of their participation in the RI/FS process, of course Teck has funded that work in accordance with the 2006 Settlement Agreement. There is the significant risk that your letter may be misconstrued in the current court proceedings, in which, as you are aware, the Tribes are seeking cost recovery.

In addition, your letter states that EPA "...will rely on a liability determination to pursue cleanup of the Site under CERCLA." In that regard, I would point out that it is premature to assume that there will be any need to establish liability in order to secure Teck's cooperation in any cleanup of the Site. This assumption ignores Teck's clear, written offers to perform remediation necessary to address impacts associated with its historic operations, which Teck has made consistently since 2003. Consistent with those offers, Teck has conducted voluntary cleanup activity at Black Sand Beach. Teck has further conducted time-critical residential soil removals in accordance with the 2006 Settlement Agreement, which preceded any liability determination. Indeed, as you aware, there has been no liability determination in respect of uplands contamination associated with air emissions. Teck remains optimistic, particularly in light of the encouraging results to date of the RI/FS, now approximately 95% complete, that Teck and EPA will be able to continue our cooperative approach to investigation and cleanup at the Site. Your letter creates the impression that Teck's willingness to address issues at the Site is predicated on a liability finding in the litigation, which is not correct.

I understand the significant political pressures which EPA must contend with, but I would appreciate

it if you would consider issuing a second letter along the lines proposed.

Best regards,

Peter Rozee

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA, Region 10
1200 Sixth Avenue (ORC-158)
Seattle, WA 98101
(206) 553-0016